



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

WHITNEY GUILLORY,

*Plaintiff,*

v.

BEAUMONT INDEPENDENT SCHOOL  
DISTRICT, CARROL THOMAS and  
FERGUSON PARKER, JR.,

*Defendants.*

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CIVIL ACTION NO. 9:07-CV-163-TH  
JURY

**ORDER DENYING MOTION FOR LEAVE**

Before the Court is *Defendants Beaumont Independent School District's and Dr. Carrol Thomas' Motion for Leave to File Amended Motion for Summary Judgment or Motion to Dismiss in the Alternative* [Clerk's Docket No. 129] filed May 19, 2010. Having considered the motion and response, the Court is of the opinion that the motion for leave should be denied.

**I. FACTUAL & PROCEDURAL BACKGROUND**

This case was originally set for trial on August 4, 2008. In the initial scheduling order [Clerk's Docket No. 24], this Court established an April 3, 2008 deadline for the filing of dispositive motions. Defendants filed a motion for summary judgment [Clerk's Docket No. 33] on that date, which was later supplemented [Clerk's Docket No. 75]. Defendants' arguments were thoroughly briefed by the parties and considered by the Court, resulting in entry of a 32-page memorandum opinion and order [Clerk's Docket No. 106] on May 8, 2009. The Court granted defendants' motion for judgment on plaintiff's common law assault and battery claim, but denied the motion in all other respects. Defendant Thomas

filed an interlocutory appeal [Clerk’s Docket No. 107] of the denial of his motion for summary judgment on the basis of qualified immunity, which effectively stayed proceedings in this Court for an additional eight months. The Fifth Circuit upheld [Clerk’s Docket No. 116] the denial of summary judgment on the basis of qualified immunity. Since the case was remanded, this Court has endeavored to convene a status conference with an eye toward entering an amended scheduling order setting the case for trial. Such efforts have been met with some degree of inertia on the part of counsel. Following delays attributed to the pursuit of additional potential appellate remedies, substitution of counsel, and scheduling conflicts, a status conference was finally held on May 6, 2010. This Court granted defendants’ motion for leave to substitute attorneys [Clerk’s Docket No. 118], a motion that was unopposed by plaintiff to the extent the substitution would not “result in significant delay or complication.” Following the status conference, the Court entered a scheduling order [Clerk’s Docket No. 127] setting the case for trial on July 26, 2010—just shy of two years after the original trial setting. On May 19, 2010, defendants requested leave to file additional motions for summary judgment on the basis that “substituted counsel have discovered jurisdictional and dispositive defensive theories and arguments that were not previously raised or considered by the Court.” Specifically, defendants intends to contest whether Parker acted under color of state law, an allegation that was denied by defendants in their answers [Clerk’s Docket Nos. 6, 42] and in pretrial papers [Clerk’s Docket Nos. 82, 88].

## II. FINDINGS


The Court **FINDS** that the defendants have wholly failed to demonstrate good cause for the modification of the dispositive motion deadline set forth in the scheduling order as is required by FED. R. CIV. P. 16(b)(4).

### III. ORDER

**IT IS THEREFORE ORDERED** that the *Defendants Beaumont Independent School District's and Dr. Carroll Thomas' Motion for Leave to File Amended Motion for Summary Judgment or Motion to Dismiss in the Alternative* [Clerk's Docket No. 129] is in all things **DENIED**.

**SO ORDERED.**

**SIGNED** this the **4** day of **June, 2010**.

  
Thad Heartfield  
United States District Judge